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SUPREME COURT, U.S.

No. 97-2026

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

STATE OF ARIZONA,
PETITIONER,

-VS-

WILLIAM LEE BRANHAM,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA COURT OF APPEALS

REPLY BRIEF

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QUESTIONS PRESENTED FOR REVIEW

1. Petitoner's question for review is stated fully in the Petition for Writ of Certiorari.

2. In reply, should this Court take jurisdiction of this case now that Petitioner's presumption that Respondent did not consent to the search of his car has been confirmed on remand?

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STATEMENT OF THE CASE

Petitioner will not reiterate the factual and procedural history of the case, and instead will rely on the statement of the case as set out in the Petition for Writ of Certiorari.

REASON WHY THE WRIT SHOULD ISSUE

I. THIS COURT SHOULD TAKE JURISDICTION OF THIS CASE IN LIGHT OF THE FACT THAT THE ARIZONA TRIAL COURT HAS DETERMINED, UPON REMAND FOR AN EVIDENTIARY HEARING, THAT RESPONDENT DID NOT CONSENT TO A SEARCH OF HIS CAR.

Respondent attempts to mislead this Court into thinking that the issue raised in the Petition for Writ of Certiorari has been rendered moot because the Arizona trial court, upon remand for an evidentiary hearing, has determined that Respondent did not consent to a search of the vehicle. Indeed, the trial court, on remand, merely confirmed what Petitioner has presumed in the petition. The issue raised by Petitioner is clearly stated as follows:

> Did the Arizona Court of Appeals err, as a matter of federal constitutional law, in holding that an arresting officer, who has stopped a driver for a traffic violation, is not justified in conducting a *restricted or limited search* for proof of ownership of the vehicle unless the driver's failure to produce proof of ownership is coupled with other factors giving rise to probable cause that the vehicle is stolen or involved in some other criminal activity?

(Petition, at i.) This issue necessarily presumes that Respondent did not give consent to search the car. In particular, the issue is whether it is reasonable for an officer to enter a vehicle to conduct a limited search for registration after making reasonable attempts to procure registration, including an inquiry as to the whereabouts of the registration prior to entry. (Petition, at 7.) The fact that the Arizona

trial court determined that consent was not given in this case strengthens Petitioner's argument and makes the issue *more* cert-worthy.

The reversal of Respondent's conviction has created a grave threat to the enforcement of Arizona's vehicle registration laws. For the reasons here and in the Petition for Writ of Certiorari, this Court should take jurisdiction of the case.

II. THE PETITION FOR WRIT OF CERTIORARI CLEARLY SUPPORTS PETITIONER'S CLAIM THAT ARIZONA HAS JOINED THE MINORITY OF JURISDICTIONS IN HOLDING THAT PROBABLE CAUSE IS NECESSARY BEFORE AN ARRESTING OFFICER CAN CONDUCT A LIMITED SEARCH OF AN AUTOMOBILE FOR PROOF OF OWNERSHIP.

Petitioner has presented a cert-worthy issue in its Petition for Writ of Certiorari. Arizona has joined the minority in holding that an arresting officer may not conduct a *limited or restricted* search of an automobile when the driver has failed to produce registration. The majority rule, as stated in the Petition, was enunciated in *State v. Boykins*, 232 A.2d 141, 143 (N.J. 1967), failure to produce proof of registration justifies an officer's search for evidence of ownership.

A. *New York v. Class.*

This Court in *Class* quite clearly stated that a demand to *inspect* for registration papers is within the scope of police authority pursuant to a valid traffic stop. 475 U.S. 106, 115 (1986). Respondent correctly notes that *Class* involved the inspection of an automobile VIN, but the Court in reaching its conclusion relied on the authority of officers to inspect for licenses and registration. 475 U.S. at 115–16.

More importantly, this Court emphasized that such a *limited* search is permissible because "[t]he search was focused in its objective and no more intrusive than necessary to fulfill that objective." *Id.* at 118. *Class* is an important case. The failure to provide the necessary documents (VIN, license, registration, etc.)

justifies a regulatory search. The reasoning is the public's vital interest in ensuring that only those qualified to do so are permitted to operate automobiles, that these automobiles are fit for safe operation, and that licensing, registration, and vehicle inspection requirements are being observed. *See Delaware v. Prouse*, 440 U.S. 648, 658 (1979).

B. Federal cases.

The federal courts have also joined the majority view enunciated in *Class*. Although *Class* involves VINs, this Court clearly indicated that the limited search exception applies to searches for licenses and registration. 475 U.S. at 115–16. The federal circuit courts have also adopted this rationale, as explained in *United States v. Miller*, 84 F.3d 1244, 1250 (10th Cir. 1996). Failure to provide proof of registration provides reasonable suspicion to the arresting officer that the vehicle might be stolen. *Class*, 475 U.S. at 114—16; *Miller*, 84 F.3d at 1250; *Boykins*, 232 A.2d at 143. It is this failure to provide proof of registration that gives rise to reasonable suspicion, which in turn justifies the officer's limited search, whether it be for a VIN, license, or registration. *See Miller*. 84 F.3d at 1250–51.

C. California cases.

Respondent mischaracterizes the holding in *Jackson v. Superior Court*, 142 Cal.Rptr. 299 (Cal. 1977), which clearly follows the majority view in holding that an officer may enter a vehicle to check on registration after first inquiring as to the location of the registration before entering to obtain it. *Jackson* requires that a reasonable attempt be made to procure registration before an unconsented entry can be sanctioned. 142 Cal.Rptr. at 302–03. The court determined that what is reasonable will, at a minimum, require an inquiry as to the whereabouts of the registration. *Id.* Further, the scope of the search must be limited to only those areas of the vehicle where the registration might be found. *Id.* California's majority view is explained by the United States District Court's opinion in *United States v. Lopez*, 474 F. Supp. 943, 948 (C.D. Cal. 1979). California follows the majority view: where, after inquiry, a driver fails to produce a valid registration, an officer may conduct a limited search

of the automobile in those areas where the registration might be found. *See Jackson*, 142 Cal.Rptr. at 302-03.

Contrary to Respondent's argument, *Jackson* does not stand for the minority rule set out in *Branham* that other factors must exist that give rise to probable cause to search the automobile. *Jackson* only requires a reasonable attempt to procure registration before conducting a limited search—the majority rule.

Furthermore, Respondent's assertion that *Jackson* involved only a state question regarding interpretation of a state statute is meritless. The underlying question regarding the issue raised here is when a state has a statute regarding regulation of a vehicle, and a driver fails to produce registration, is that failure to produce the required papers enough to permit a limited search for the documents under the Fourth Amendment? The statute regulating automobiles must exist before the issue can arise. Without the statute, the officer has no means to request the documents.

D. New York.

New York also follows the majority view. *People v. Reyes*, 499 N.Y.S.2d 321 (N.Y. Sup. Ct. 1983). The New York courts acknowledge that probable cause to search an automobile does not arise merely because the driver does not carry the proper documentation. *Reyes*, 499 N.Y.S.2d. at 323. However, New York does recognize that failure to comply with the rules governing ownership of automobiles diminishes the expectation of privacy and gives the police a reasonable basis to further inspect the vehicle. *Id.* at 323-24. This is true whether proof of ownership is a VIN, license, or registration. *Id.* The court was careful to note that a full blown search would be unwarranted because, as the court stated earlier, probable cause does not exist. *Id.* However, a search that involves the least intrusive means of reliably verifying the automobile's ownership is permitted. *Id.*

E. Rhode Island.

Respondent also mischaracterizes the court's conclusions in *State v. Halstead*, 414 A.2d 1138 (R.I. 1980). The court in *Halstead*

relies on *State v. Boykins*, 232 A.2d 141 (1967), which is the landmark case holding that failure to produce proof of registration justifies an officer's search for evidence of ownership. In *Halstead*, the driver failed to produce valid registration. In concluding that the police officers did not violate the defendant's Fourth Amendment rights, the court concluded that a search for evidence of ownership was justified and cited to *Boykins* as authority for its conclusion. 414 A.2d at 1149 n.14.

F. New Jersey.

New Jersey is the seminal case for the majority view that failure to produce registration justifies an officer's search for evidence of ownership. *Boykins*, 232 A.2d at 143. Respondent's contention that New Jersey requires more than failure to provide proof of registration before a limited search is permitted is wrong:

> The proper scope of a police search for automobile credentials after a traffic stop is found in *State v. Jones*, 195 N.J.Super. 119, 122–23, 478 A.2d 424 (App.Div. 1984):
>
> > [W]here there has been a traffic violation and the operator of the motor vehicle is unable to produce proof of registration, a police officer may search the car for evidence of ownership. However, . . . a search for evidence of ownership must be "confined to the glove compartment or other area where a registration might normally be kept in a vehicle. . . ." [quoting *State v. Patino*, 83 N.J. 1, 12, 414 A.2d 1327 (1980) (quoting *State v. Barrett*, N.J.Super. 211, 215, 406 A.2d 198 (Law.Div. 1979)).]

State v. Holmgren, 659 A.2d 939, 940 (N.J. Super. Ct. App. Div. 1995).

G. North Carolina.

Respondent correctly points out that North Carolina also follows the majority position espoused by Petitioner. *See State v. Byrd*, 209 S.E.2d 516 (N.C. App. 1974) ("[a] traffic violation as such will justify a search for things related to it. So . . . if the operator is unable to produce proof of registration, the officer may search the car for evidence of ownership. . . .").

It is important to note that *Byrd* relied exclusively on *Boykins*, and quoted from *Boykins*. *Byrd*, 209 S.E.2d at 516. This undermines Respondent's argument that New Jersey does not follow the rule espoused by Petitioner. Thus, both *Boykins* and *Byrd* hold that an officer is justified in conducting a limited search for proof of ownership when a driver fails to produce a valid registration. *Boykins*, 232 A.2d at 143; *Byrd*, 209 S.E.2d at 516. This is the majority rule and Arizona has strayed from this rule.

Moreover, Respondent alleges that *Byrd* is unpersuasive because it is a court of appeals case. The case was, however, petitioned to the state's highest court, and the North Carolina Supreme Court declined the opportunity to review the case. *State v. Byrd*, 212 S.E.2d 167 (writ of certiorari to review decision denied). Therefore, *Byrd* sets forth the law of North Carolina.

H. The majority rule is better reasoned than the minority rule.

Police officers are justified in conducting a limited or restricted search of a vehicle for proof of ownership after a valid traffic stop and if the driver fails to produce valid registration papers. The intrusion is *de minimis* in light of the fact that the motorist is already lawfully stopped for a traffic violation and is required by law to provide the necessary documents. This is not the type of intrusion that the Fourth Amendment intended to restrict. This procedure should be deemed a "routine administrative inspection" rather than a search subject to constitutional scrutiny. The Arizona Court of Appeals' decision in *Branham* deviates from the majority rule. Petitioner asks this Court to clarify an important question of Fourth Amendment jurisprudence, and, perhaps more importantly, to allow

state law enforcement officials to enforce their state's vehicle registration requirements.

CONCLUSION

Based on the foregoing authorities and arguments, Petitioner respectfully requests this Court to grant the petition for writ of certiorari.

Respectfully submitted,

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